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REMARKS

This Amendment is in response to the Office Action mailed November 3, 2006. In the Office Action, the rejections presented by the Examiner are erroneous and inconsistent with statutory requirements. For instance, claims 17-19 are rejected under 35 U.S.C. §102(e) as being "anticipated" by the combined teachings of three (3) references. Claims 32-33 are rejected under 35 U.S.C. §103(e) as being "anticipated". Applicants respectfully submit that these rejections are inconsistent with statutory requirements, and for this response, the above-identified rejections shall be treated as rejections under 35 U.S.C. §103(a).

Applicants respectfully request that the Examiner contact the attorney identified below to coordinate a telephone conference if the pending claims are still not considered to be allowable by the Examiner. The telephone conference may greatly facilitate the prosecution of the subject application.

Herein, Applicants respectfully traverse the Official Notice associated with claims 32-33 because the claims are not simply directed to the adjustment of transmission power, but rather, the claims are directed to adjustment in response to comparison of suggested and determined power levels.

Rejection Under 35 U.S.C. § 102

(1) Claims 30-31 were rejected under 35 U.S.C. §102(e) as being anticipated by Porter (U.S. Patent No. 6,745,013). Applicants respectfully request the Examiner to withdraw the rejection because a *prima facie* case of anticipation has not been established.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Vergegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

For instance, with respect to independent claim 30, Applicants respectfully submit that Porter does not describe each and every limitation set forth in the claim. The Office Action identifies that column 2, lines 34-45 and col. 3, lines 18-24 of Porter describe the claimed invention. We disagree.

Column 2, lines 34-45 of Porter includes the following description:

a) transmitting a first signal from the central control node to the remote subscriber node;
b) measuring a received power level of the first signal received at the remote subscriber node; and
c) setting a transmit power level of the remote subscriber node in response to the received power level;

wherein the transmit power level of the remote subscriber node is set before the remote subscriber node has transmitted any signals onto the network, whereby said method is an open-loop method.

Column 3, lines 18-24 of Porter includes the following description:

SUMMARY OF THE INVENTION

The method and system of open loop power control of the present invention improves upon the above described schemes by using the following principle. In the present invention, the power level of the downstream burst arriving from the access point is measured...

In essence, this description is not directed to the operation of (1) comparing the power level *to determined power levels stored within entries of a conversion table*, the conversion table including a plurality of entries associated with determined power levels and a plurality of entries associated with suggested power levels...; and/or (2) *setting the power level of the signal to a first suggested power level* of the suggested power levels corresponding to a first determined power level of the determined power levels if the power level *matches* the first determined power level. *Emphasis added.*

Reconsideration and withdraw of the outstanding §102(e) rejection as applied to claim 30 is respectfully requested. Dependent claim 31 is allowable if, upon reconsideration, independent claim 30 is deemed to be in condition for allowance. Applicants reserve the right to present additional arguments for traversing the rejection if an Appeal is warranted

(2) Claims 34-38 were rejected under 35 U.S.C. §102(e) as being unpatentable over Feder (U.S. Patent No. 6,438,363). Applicants respectfully request the Examiner to withdraw the rejection because a *prima facie* case of anticipation has not been established. Herein, with respect to claim 34, the Office Action states that column 8, lines 22-25 of Feder discloses "decreasing a power level for transmission of signals from the device *upon detecting that the power level of the beacon is greater than a predetermined power level threshold.*" *Emphasis added.* Applicants respectfully disagree because the teachings of Feder are directed to the transmission of an AP Ping request and the adjustment of the Automatic Gain Control (AGC) affecting the signal-to-noise ratio (SNR). Feder fails to provide any description directed to detecting the power level of the beacon as compared to a predetermined power level threshold as claimed.

Moreover, with respect to claim 37, Applicants respectfully submit that Feder does not describe nor even suggest "periodically transmitting beacons from the access point at a designated power level greater than the [decreased] power level to enable other neighboring access points to assess channel conditions." As set forth in the specification, one advantage of the periodic transmission is to enable devices, such as other access points (APs) for example, to continue to detect an AP that has undergone power level reduction. Applicant respectfully requests the Examiner to provide ample evidence of such alleged teachings.

In light of the foregoing, Applicants respectfully request the Examiner to withdraw the outstanding §102(e) rejection and reconsider the allowability of pending claims 34-38. Of course, Applicants reserve the right to present additional arguments if an Appeal is warranted.

Rejection Under 35 U.S.C. § 103

(1) Claims 6-7, 9-10, 20-21 and 25 are rejected under 35 U.S.C. §103(a) as being allegedly obvious over Moon (U.S. Patent No. 6,671,266) in view of Yun (U.S. Patent No. 6,463,295). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the combined teachings of the cited references fail to describe or suggest all of the claim limitations.

First, Applicants respectfully submit that claim 9, 20-21 and 25 have been cancelled previously so this rejection incorrectly identifies which claims are currently rejected. Only claims 6-7 and 10 are pending.

Second, Applicants respectfully submit that pending claim 6 has been amended to include the limitation that a decrease in power level is performed in accordance with a logarithmic function while an increase in power is performed in a manner that is not logarithmic based. Support for the amendment may be found on page 7, line 32 to page 8, line 2 of the subject application. The combination of these cited references clearly does not teach a bifurcated power level scheme as claimed.

Reconsideration and withdraw of the outstanding §103(a) rejection as applied to pending claims 6-7 and 10 is respectfully requested.

(2) Claims 11-12, 22-24 and 27-29 are rejected under 35 U.S.C. §103(a) as being allegedly obvious over Moon in view of Yun and Oberholtzer (U.S. Patent No. 5,465,399). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established.

First, Applicants again submit that claims 22-24 and 27-29 have been previously cancelled without prejudice.

Second, Applicants respectfully submit that a *prima facie* case of obviousness has not been established for claim 11 and 12. For instance, the Office Action states that claim 12 is rendered obvious because "the second power level is greater than the first power level and first power level is greater than the third power level." The Office Action identifies the formula

(minimum power < increase power by Pd < maximum power). Applicants respectfully disagree with the rationale for the rejection and have placed in claim into independent form to include certain limitations associated with claim 1. Applicants respectfully point out that having different *rate of change* as claimed (e.g., larger for decrease power levels or smaller for increases in power levels) is a stark contrast from the *incremental power level change* as suggested by the combined teachings of the cited references. *Emphasis added.*

Moreover, claims 11 and 12 are dependent on claim 6 that Applicants believe is in condition for allowance. Further discussion of the allowability of claims 11 and 12 is not necessary at this time. Applicants reserve the right to present additional arguments as to the allowability of claims 11 and 12 if an Appeal is warranted.

Reconsideration and withdraw of the outstanding §103(a) rejection as applied to pending claims 11 and 12 is respectfully requested.

(3) Claims 17-19 are rejected under 35 U.S.C. §103(a) as being allegedly obvious over Moon in view of Yun and Lappetelainen (U.S. Patent No. 6,842,605). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. For instance, with respect to claim 17 for example, the Office Action alleges that Lappetelainen discloses "the response to the signal is a beacon from a second wireless electronic device." *See page 4 of the Office Action.* Applicants respectfully disagree because column 7, lines 19-27 of Lappetelainen is directed to the transmit power of a member station. Hence, this passage of Lappetelainen is not directed to a response signal *per se* and does not suggest any beacon type signals to be utilized as a response signal.

Hence, Applicants respectfully request the Examiner to reconsider and withdraw the outstanding §103(a) rejection as applied to pending claims 17-19.

(4) Claims 32-33 are rejected under 35 U.S.C. §103(e) as being "anticipated" by Porter (U.S. Patent No. 6,745,013), but Applicants shall presume that claims 32-33 are being rejected under 35 U.S.C. §103(a). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. Further discussion of the grounds for traversing the rejection is moot because independent claim 30 is in condition for allowance, and thus, claims 32-33 are in condition for allowance as well.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding §103(a) rejection as applied to pending claims 32-33.

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Conclusion

Applicants respectfully request reconsideration of the rejections and issuance of a timely Notice of Allowance based on the allowability of the pending claims.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: February 5, 2007 By _____
William W. Schaal
Reg. No. 39,018
Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025

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